



March 14, 2000

Lieutenant Arturo Valdez
Central Record Division
City of McAllen Police Department
1501 Pecan Boulevard
McAllen, Texas 78501

OR2000-1009

Dear Lieutenant Valdez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 134910.

The City of McAllen Police Department (the "department") received a request for "any and all incidents involving [a named individual] including arrests." You have submitted for our review information that is responsive to the request. You assert the information is excepted from public disclosure under sections 552.101 and 552.108 of the Government Code. We have reviewed the submitted information and considered the exceptions you assert.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information protected by the common law right of privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). We note at the outset that the requestor is essentially asking that the department compile the criminal history of the named individual. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (concluding that federal regulations which limit access to criminal history record information that states obtain from the federal government or other states recognize privacy interest in such information). Similarly, open records decisions issued by this office acknowledge this privacy interest. *See Open Records Decision Nos. 616 (1993), 565 (1990)*. The department, therefore, must withhold all compilations of the referenced individual's criminal history pursuant to section 552.101. Except as noted below, we find all of the submitted documents pertain to the named individual's criminal history. We therefore determine you must not release this information to the requestor.

One document, a report for case number 90-037490, does not appear to pertain to the criminal history of the named individual.¹ Thus, none of the information on this document may be withheld as implicating the named individual's right to privacy. You also assert section 552.108 of the Government Code. Section 552.108(a)(2) excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication." See Gov't Code § 552.108. The information you have provided indicates that case number 90-037490 has reached a final result other than conviction or deferred adjudication. We therefore conclude that most of the information pertaining to case number 90-037490 may be withheld pursuant to section 552.108(a)(2). We note, however, that information normally found on the front page of an offense report is generally considered public. Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, you must release to the requestor the basic front page offense report information. See Open Records Decision No. 127 (1976) (summarizing the types of information made public by *Houston Chronicle*).

In summary, you may withhold the offense report for case number 90-037490 pursuant to section 552.108(a)(2), but you must release that information normally found on the front page of the report. You must not release any of the remaining information as it implicates the right to privacy of the named individual.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

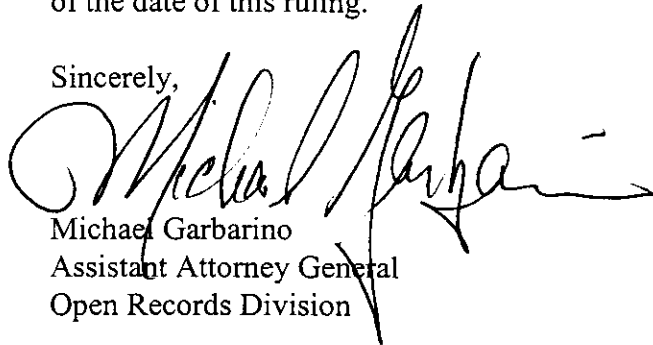
¹As you have submitted this document for our review, we nevertheless assume it contains information that is responsive to the request at issue. We have marked this document with a red flag.

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Garbarino", is written over the typed name and title.

Michael Garbarino
Assistant Attorney General
Open Records Division

MG/ch

Ref: ID# 134910

Encl. Submitted documents

cc: Ms. Nora Lisa Lozano Cardena
203 S. Palm, Apt. #4
Pharr, Texas 78577
(w/o enclosures)